

**QUARTERLY REPORT FOR GAO PROTESTS
FOR THE PERIOD OF OCTOBER 01, THRU DECEMBER 31, 2005**

1. Number of protests filed:

	1Q06	4Q05	3Q05	2Q05
o AMC	20	25	20	16
o USACE	12	13	7	3
o DA Other	60	64	58	35
TOTAL	92	102	85	54

(Please refer to listing of protests by MACOM at end of this report)

2. Number of protest sustained/granted:

	1Q06	4Q05	3Q05	2Q05
o AMC	0	1	0	0
o USACE	1	1	1	1
o DA Other	1	4	0	1
TOTAL	2	6	1	2

3. Costs:

a. Costs and fees awarded by GAO to protester (amounts listed for USACE and DA Other in 1Q06 are under negotiation and have not been finalized):

	1Q06	4Q05	3Q05	2Q05
o AMC	\$0	\$0	\$0	\$15,704
o USACE	\$395,000	\$0	\$0	\$1,990
o DA Other	\$642,195	\$0	\$0	\$0
TOTAL	\$1,037,195	\$0	\$0	\$17,694

b. Estimated preaward value of requirement or postaward contract cost/price:

(1) Preaward protests (estimated value of requirement):

	1Q06	4Q05	3Q05	2Q05
o AMC	\$526,814,262	\$1,139,095,600	\$33,739,499	\$1,862,814
o USACE	\$15,368,072	\$1,581,000	\$329,901,159	\$6,691,600
o DA Other	\$9,614,942	\$409,017,711	\$57,653,980	\$927,125,652
TOTAL	\$551,797,276	\$1,549,694,311	\$421,294,638	\$935,680,066

(2) Postaward protests (contract cost/price):

	1Q06	4Q05	3Q05	2Q05
o AMC	\$905,307,312	\$553,548,725	\$293,857,768	\$2,827,490,705
o USACE	\$68,200,283	\$105,989,120	\$70,000,000	\$246,553,429
o DA Other	\$14,622,434	\$13,082,134	\$1,315,405,460	\$1,951,111
TOTAL	\$988,130,029	\$672,619,979	\$1,679,263,228	\$3,075,995,245

c. Total government personnel costs resulting from protests:

	1Q06	4Q05	3Q05	2Q05
o AMC	\$225,454	\$79,815	\$282,876	193,080
o USACE	\$42,342	\$62,485	\$13,015	15,515
o DA Other	N/A	N/A	N/A	N/A
TOTAL	\$267,796	\$142,300	\$295,891	\$389,617

4. Lessons learned, issues and trends:

a. AMC Lessons Learned:

(1) TPL, Inc., B-297136.2

Learned to be careful using the past performance reference of a competing offeror. This may be considered a biased reference.

(2) FN Manufacturing, B-297172.1 & B-297172.2

(a) While contemporaneous documentation stating the basis for an affirmative determination of responsibility is not necessary, it certainly helps tilt the balance towards the Government in cases where the GAO finds it necessary to review the contracting officer's responsibility determination.

(b) When a contractor has a serious allegation about another contractor and feels strongly enough to hire a law firm to prepare a notebook of documents purporting to establish the allegations, the agency should provide a formal response.

(c) When exception 1 to CICA (only one responsible source) is used, the synopsis needs only to call out footnote 22 rather than providing the notice on the synopsis.

(3) Kongsberg Protech, B-297237.1

Timely replies to contractor inquiries can establish a trusting relationship and open communications which may avoid protests to the GAO. A contractor that feels fairly treated may consider an agency-level protest as opposed to going to the GAO. This would benefit both the contractor and the agency.

(4) PHT Corporations, B-297313.1

It was useful that the Source Selection Decision should discuss alternative findings against the evaluation criteria when appropriate on close calls. For example, if it is

unclear whether an offeror should get rating X or Y, but it is certain that the answer doesn't impact the award decision, the SSD should discuss both ratings to avoid challenges over which rating was more appropriate.

(5) Mnemonics, Inc., B-297236.1

When evaluating cost on an IDIQ contract, ensure that the total evaluated price does not include more total items than that which is permitted to be purchased under the maximum quantity.

b. USACE Lessons Learned:

(1) ITT Federal Services International Corporation, B-293783, B-296783.3, Oct, 11 2005, SUSTAINED:

ITT protested the award of a contract to Kellogg, Brown, & Root Services, Inc. (KBRS) under an RFP issued by the U.S. Army Corps of Engineer's Transatlantic Center (TAC) to acquire logistics support services throughout the Army's European theater of operations. ITT alleged that TAC misevaluated proposals.

Award was to be made to the contractor whose proposal represented the best value to the Government. The source selection decision focused primarily on the adequacy of ITT's and KBRS' staffing proposals for (1) the tactical vehicle/non-tactical equipment maintenance, non-tactical vehicle transportation motor pool operations (TV/NTV) and (2) program management. With respect to TV/NTV, the RFP provided historical workload data for six maintenance activities and the total number of occurrences for each. The agency then multiplied the total number of maintenance occurrences by the number of labor hours it estimated would be required to accomplish various tasks. Contractors were to propose the total number of labor hours they believed would be required to complete these tasks against the total number of occurrences provided by the Government. Based on these numbers, the agency determined that ITT had understated the number of hours necessary to perform this functional area by 198,963, which resulted in a \$3 million understatement of the firm fixed-price portion of ITT's proposal. KBRS' staffing proposal for TV/NTV was determined to be reasonable and realistic with no price/cost understatement. The GAO found that while KBRS' TV/NTV staffing proposal approximated the amount of total labor hours for this task in the Government estimated, KBRS had based its proposal on a significantly lower number of total occurrences than required by the Government. This resulted in a corresponding understatement of \$4 million in the KBRS price/cost proposal. Accordingly, the GAO determined that there was a reasonable possibility that Source Selection Evaluation Board (SSEB) and the Source Selection Authority (SSA) may have reached different conclusions about KBRS' proposal had these understatements been considered.

GAO concluded that there was a reasonable possibility that the SSEB and the SSAA would have reached different conclusions about both proposals. Accordingly, the protest was sustained. GAO recommended that TAC reexamine and, if appropriate, revise its staffing estimates for all functional areas, obtain revised proposals, conduct evaluations, and make a new source selection decision.

2) Johnson Machine Works, Inc., B-297115, October 20, 2005, DENIED:

Johnson Machine Works, Inc (JMW) protests the rejection of its low bid under invitation for bids (IFB) No. W911WN-05-B-0004, issued by USACE, for work on the Emsworth Locks and Dams, located on the Ohio River in western Pennsylvania. USACE rejected JMW's bid because the surety's power of attorney attached to the bid bond failed to

designate the individual who signed the bond on behalf of the surety as an attorney-in-fact authorized to bind the surety.

JMW argued that USACE should not have rejected its bid because the bid bond was valid and effective. JMW contended that the bid documents clearly established that Mr. Hixenbaugh was authorized to sign the bond and bind the surety. USACE argued that the protester's failure to provide documentary evidence at the time of bid opening that Mr. Hixenbaugh was authorized to bind the surety represented a defect that could not be cured after bids were opened, and that the bid had to be rejected as nonresponsive. The Comptroller General agreed with USACE, denying the protest because the corporate surety's power of attorney form attached to bid bond failed to designate the individual who signed the bond on behalf of the surety as an attorney-in-fact authorized to bind the surety. In other words, USACE properly determined the bond was defective and their bid nonresponsive because it was not clear whether the surety would be bound. Evidence of the authority of surety's agent to sign bid bond on behalf of the surety must be furnished with a bid prior to bid opening, and failure to furnish it renders the bid nonresponsive.

The key lesson in this case comes from a footnote referencing a new FAR provision, 28.101-3, which became effective September 30, 2005, after the date of bid opening. The new FAR language establishes that a copy of an original power of attorney, including a photocopy or facsimile copy, when submitted in support of a bid bond, is sufficient evidence of the authority to bind the surety, and making questions concerning the authenticity and enforceability of a power of attorney at the time of bid opening a matter of bidder responsibility (to be handled after bid opening) rather than bid responsiveness. The FAR revision is the result of an interagency partnership with industry to craft a solution to conflicting case law and regulatory silence in regard to bid bonds. It is our expectation that protests such as Johnson Machine's will be obviated now that the rules on acceptability of bid bonds are clear.

c. DA Others – Lessons Learned:

(1) Cherry Road Technologies and Electronic Data Systems Corp., B-296915, et al.:

Cherry Road Technology (CRT) and Electronic Data Systems (EDS) challenged an award to Lockheed Martin (LM) to operate the Army's Knowledge Online (AKO) system. CRT and EDS alleged: (1) it was improper for LM to propose the use of government-owned facilities; (2) the contracting officer failed to use FAR Part 45 to eliminate LM's competitive advantage associated with its use of government-facilities; and (3) the price and non-price evaluation ratings were flawed. The GAO denied the protests, ruling that (1) the RFP was clear that GFP would not be provided under this contract but that did not preclude an offeror from using government property obtained otherwise; (2) that FAR Part 45 did not apply to this solicitation because the leases for government property were based upon statutory leasing authority and were at fair market value; and (3) the protest grounds challenging the SSD and evaluation ratings were mere disagreements with the agency's conclusions.

Lesson Learned: The most far reaching result in this case was the GAO's resolution of the challenge to the price evaluation. This was a fixed priced contract and LM proposed a price that was \$100 million less than either protester. The Army did not discuss price during discussions, and the protesters alleged that the discussions were therefore inadequate. The GAO disagreed, noting that the Army's IGE was higher than any of the offered prices, that the evaluation scheme required that only a price reasonableness analysis be done (i.e. were the prices too high), and the Army complied with that requirement. Thus this case stands in stark juxtaposition to the Creative Technologies decision where GAO found an agency's price discussions were inadequate.

(2) Blane International Group, Inc. ,B-297384:

Blane challenged the multiple awards of contracts for up to 650 armored vehicles. The buying command was Joint Contracting Command for Iraq/Afghanistan (JCC-IA). Blane argued that its proposal was improperly evaluated as noncompliant, despite the fact that it specifically took exception to several mandatory requirements for the vehicles. Blane also challenged the awardees' vehicles as not meeting minimum contract requirements, key among which was the ability to withstand IED blast. The GAO rejected Blane's arguments, finding JCC-IA's evaluation of proposals reasonable.

Lesson Learned: The key to success here was a comprehensive agency report (on time with no document request overlooked), and a compelling legal memo that explained the agency's evaluation.

(3) Cogent Systems, B-295990.4, B-295990.5:

Cogent protested an award to Motorola for an Automated Fingerprint Identification System to be deployed in Iraq. Cogent challenged its evaluation results and further alleged that its discussions were not meaningful. The Army evaluators identified a number of material weaknesses in the Cogent proposal, among them the flat bed scanner proposed by Cogent. The GAO disagreed that this was a weakness, but even if it was, concluded that the Army failed to discuss the issue with Cogent. Since this resulted in prejudice, the GAO sustained the protest.

Lesson Learned: Because of the operational need for this equipment, a CICA-stay override based upon urgent and compelling circumstances was approved and equipment delivery was ongoing during the protest. The GAO noted that testimony at the hearing indicated that any upgrades to the delivered system could only be performed by the awardee, Motorola. As a result, the only remedy offered to Cogent was recovery of its protest and proposal costs. Had the override been based instead upon the best interest of the Government, the GAO would have disregarded the costs incurred by the Army in rendering its recommendation. 4 C.F.R. 21.8(c).

(4) APL Limited (APL) and Maersk Line Limited (Maersk), B-29768.1 and B-29768.2:

APL and Maersk challenged a solicitation issued by the Surface Deployment and Distribution Command (SDDC) for international cargo transportation and distribution services. This procurement would provide the shipping that supports the war in Iraq and Afghanistan. The estimated value of the three year procurement was \$1.5 billion. APL and Maersk primarily objected to a cap on the detention fee the Government would pay for containers in the Government's possession that are not returned to the carrier after the standard 15 free days has expired. Currently, the Government has more than 10,000 containers that it cannot return within the normal 15 day turn-around time and has paid more than \$120 million in annual penalties for the containers in Iraq and Afghanistan. APL and Maersk also objected to the purchase price specified in the solicitation that the Government offered to pay the carriers for the containers the Government failed to return. APL and Maersk complained that the solicitation failed to define an exigency area and the circumstances when an exigency area may be declared were vague. The terms and conditions that were objectionable to APL and Maersk were negotiated and an amendment to the solicitation was issued. In the amendment; (1) exigency area was defined and the authority to declare an exigency area was elevated from the SDDC Commander to the Commander, U.S. Transportation Command; (2) the cap on detention fees for peacetime operations was removed; (3) the daily detention fee for exigency areas was capped at 180 days; however, if the container was not returned on day 181

the daily detention fee will continue to accrue at a reduced rate that will be credited against the purchase price of the container; and (4) the purchase price initially specified in the solicitation for the containers was increased. Once these terms were amended, the protesters withdrew their protests.

Lesson Learned: This protest was really a business dispute between parties with a longstanding relationship. Recognizing this fact, CAD devoted its efforts to hammering out a business solution, not pressing forward with pointless litigation. Those efforts resolved the protest, and thereby ensured continuity of these vital services.

(5) Innovative Technology Applications, Inc., B-297407:

ITA challenged the multiple awards of ID/IQ contracts for distributed learning and educational services for the U.S. Army Training Support Center. Many offerors had outstanding evaluations, and awards were thus made to those offerors in that category with the lowest prices. ITA challenged those awardees alleging that their prices were too low and the Army's decision to revise its IGE after proposals were received was improper. The GAO denied the protest. Since this was a fixed-price contract, with the risk of performance on offerors rather than the Government, offerors were free to offer low prices – even unreasonably low prices. As to the IGE, there was no prohibition precluding the Army from revising its IGE after receipt of proposals.

Lesson Learned: Agencies have great flexibility in developing IGE's. Here the initial IGE, based upon historical data, was found to be hopelessly flawed when compared to the prices received. It was jettisoned, and a new IGE prepared using the offerors' prices as a guide. Since an IGE is an internal Government document and not relied upon by offerors, it is impossible for any protester to show prejudice when an IGE is revised during evaluations.

(6) FitNet Purchasing Alliance, B-297355:

FitNet challenged a purchase of fitness equipment limited to FSS schedule holders made via the FedBid reverse auction site. FitNet, a small business, argued that the requirement should instead have been set aside for small businesses. The GAO disagreed, noting that IAW FAR 8404(a)(1) the small business requirements of FAR Part 19 simply did not apply.

Lesson Learned: FAR Part 8 trumps FAR Part 19.

(7) High Plains Computer, B-297363, B-297395:

High Plains challenged an award made by Ft. Riley for various printers. The Army required Hewlett Packard (HP) printers and solicited quotes from vendors holding ID/IQ contracts to provide such equipment. High Plains challenged the procedures used to place these orders. The GAO dismissed these protests because High Plains – an authorized dealer for HP – did not hold an ID/IQ contract, nor did it show authority from HP to protest on its behalf.

Lesson Learned: Authorized vendors are common, and are generally disappointed when they lose a business opportunity. Their disappointment, however, does not confer standing upon them when they protest in their own name. If such a protest is filed in the name of the principal, moreover, challenge the authority of the authorized representative to litigate on behalf of the principal. Here, HP products would be provided no matter what vendor received the Army's order, and thus the likelihood of any objection from HP was remote.

5. Protest filed by major commands (HCAs):

a. AMC, GAO protests:

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b. USACE, GAO protests:
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c. DA Other, GAO protests:
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**QUARTERLY REPORT FOR AGENCY LEVEL PROTESTS
FOR THE PERIOD OF OCTOBER 01 THRU DECEMBER 31, 2005**

6. Number of protest filed:

	1Q06	4Q05	3Q05	2Q05
o AMC	7	3	5	13
o USACE	11	16	10	7
o DA Other	N/A	N/A	N/A	N/A
TOTAL	18	19	15	20

(Please refer to listing of protests by MACOMs at the end of this report)

7. Number of protest sustained/granted:

	1Q06	4Q05	3Q05	2Q05
o AMC	0	0	0	0
o USACE	0	0	0	0
o DA Other	N/A	N/A	N/A	N/A
TOTAL	0	0	0	0

8. Costs:

a. Costs and fees awarded to protester:

	1Q06	4Q05	3Q05	2Q05
o AMC	\$0	\$0	\$0	0
o USACE	\$0	\$0	\$0	0
o DA Other	N/A	N/A	N/A	N/A
TOTAL	\$0	\$0	\$0	\$0

b. Estimated preaward value of requirement or postaward contract/price:

(1) Preaward estimated value of requirement:

	1Q06	4Q05	3Q05	2Q05
o AMC	\$52,806,198	\$2,751,507	\$0	\$110,348,343
o USACE	\$6,948,745	\$20,269,879	\$74,691,810	\$ 8,303,634
o DA Other	N/A	N/A	N/A	N/A
TOTAL	\$59,754,943	\$23,021,386	\$74,691,810	\$ 35,965,079

(2) Post award protest (contract cost/price)

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c. Total government personnel costs resulting from protests:

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9. Lessons learned, issues and trends:

a. **AMC- Lessons Learned:**

(1) **Rotair Industries**, 270905

We will continue to review historical production lead time and current market conditions when developing the agency's delivery requirements within our solicitations. Today's market conditions for long lead material and specialty metal make it more difficult to determine in advance a realistic delivery schedule. This protest allowed us to evaluate the planning processes currently in place and validated that continued due diligence is required prior to issuing solicitations.

b. **USACE Lessons Learned:** No significant information to report.

c. **Other DA Lessons Learned:** Not applicable - will be submitted on fiscal year ending basis.

10. Protest filed by major commands (HCAs):

a. AMC, Agency protest:

AMC (Agency) TOTAL	1Q06	4Q05	3Q05	2Q05
ACLAL	0	0	0	0
AFSC	0	0	0	1
ANDA	0	0	0	0
ARDEC	0	0	0	0
ARL	0	0	0	0
ATCOM	0	0	0	0
AMCOM	2	2	3	4
AMCOM (AATD)	0	0	0	0
BGAD	0	0	0	0
CACWO	0	0	0	0
CCAD	0	0	0	0
CBDCOM	0	0	0	0
CECOM	1	1	0	1
DESCOM (Letterkenny)	0	0	0	0
DPG	0	0	0	0
JMC	0	0	0	0
IOC	0	0	0	0
LEAD	0	0	0	0
MCALESTER	0	0	0	0
MICOM	0	0	0	0
NATICK	0	0	0	0
OSC	0	0	0	0
PBA	0	0	0	0
RDECOM	0	0	1	2
RMA	0	0	0	0
RRAD	0	0	0	0
SBCCOM	0	0	0	0
SSCOM	0	0	0	0
TACOM	4	0	1	5
TECOM	0	0	0	0
TECOM-OPTEC	0	0	0	0
TECOM-Dungway	0	0	0	0
TECOM-Yuma Proving G	0	0	0	0
UNKNOWN	0	0	0	0
USMA	0	0	0	0

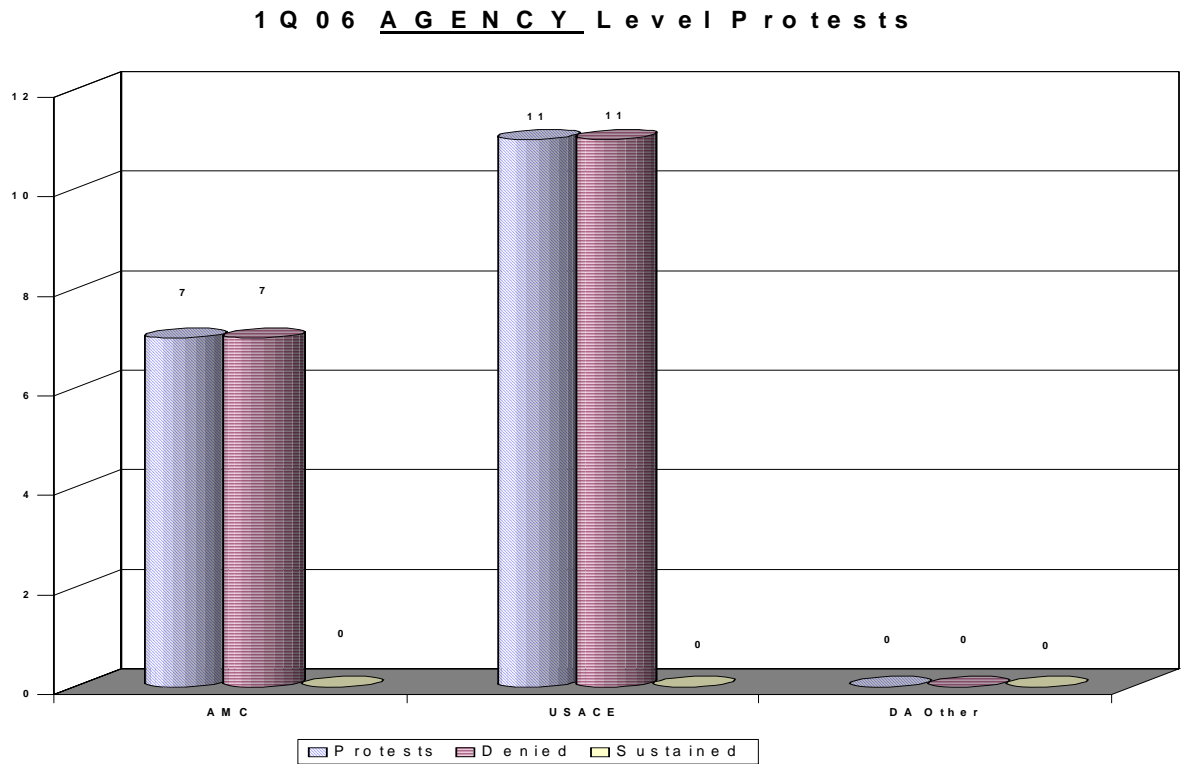
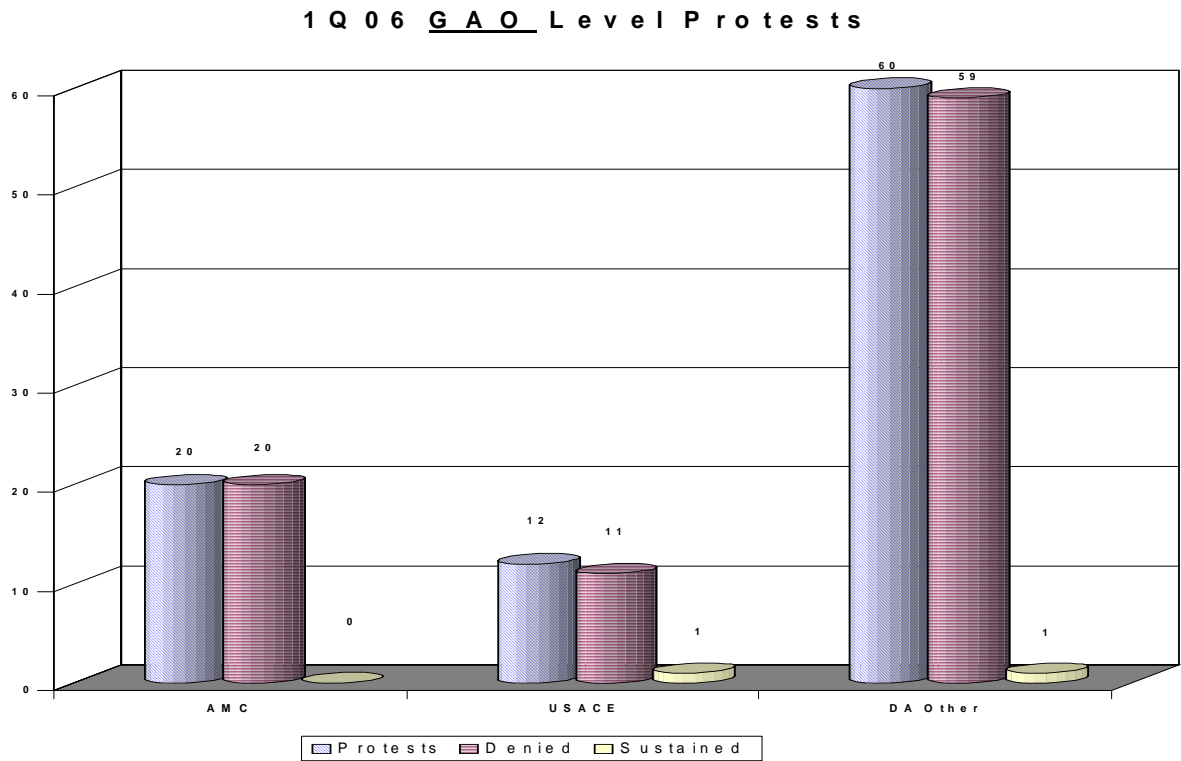
b. USACE, Agency protest:

USACE (Agency) TOTAL	1Q06	4Q05	3Q05	2Q05
ALASKA	0	1	0	0
ALBUQUERQUE	1	0	0	1
BALTIMORE	0	2	1	0
BUFFALO	0	0	2	0
CHARLESTON	0	0	0	0
CHICAGO	0	0	0	0
DETROIT	0	0	0	1
EUROPE	0	0	0	0
FAR EAST	0	0	0	0
FORT WORTH	0	0	0	0
GALVESTON	4	0	0	0
HEADQUARTERS	0	0	0	0
HONOLULU	0	0	0	0
HUMPHREYS ENG CNTR	0	0	0	0
HUNTINGTON	0	1	0	0
HUNTSVILLE	0	0	2	0
JACKSONVILLE	2	0	0	0
JAPAN	0	0	0	0
KANSAS CITY	0	0	0	0
LITTLE ROCK	0	0	0	0
LOS ANGELES	0	0	0	0
LOUISVILLE	0	0	1	2
MEMPHIS	0	1	0	0
MOBILE	0	0	0	0
NASHVILLE	0	0	0	0
NEW ENGLAND	0	0	0	0
NEW YORK	0	3	1	1
NEW ORLEANS	1	0	0	0
NORFOLK	1	1	1	0
OMAHA	0	0	0	0
PACIFIC OCEAN DIV	0	0	0	0
PHILADELPHIA	1	1	0	0
PITTSBURGH	0	0	0	0
PORTLAND	0	0	0	0
ROCK ISLAND	0	0	0	0
SACRAMENTO	0	0	0	0
SAN FRANCISCO	0	4	0	0
SAVANNAH	0	0	1	0
SEATTLE	0	1	0	1
ST LOUIS	0	0	0	0
ST PAUL	0	0	0	0
TRANSATLANTIC	0	0	0	0
TRANSATLANTIC (EUROPE)	0	0	1	0
TULSA	0	1	0	0
VICKSBURG	1	0	0	0
WALLA WALLA	0	0	0	0

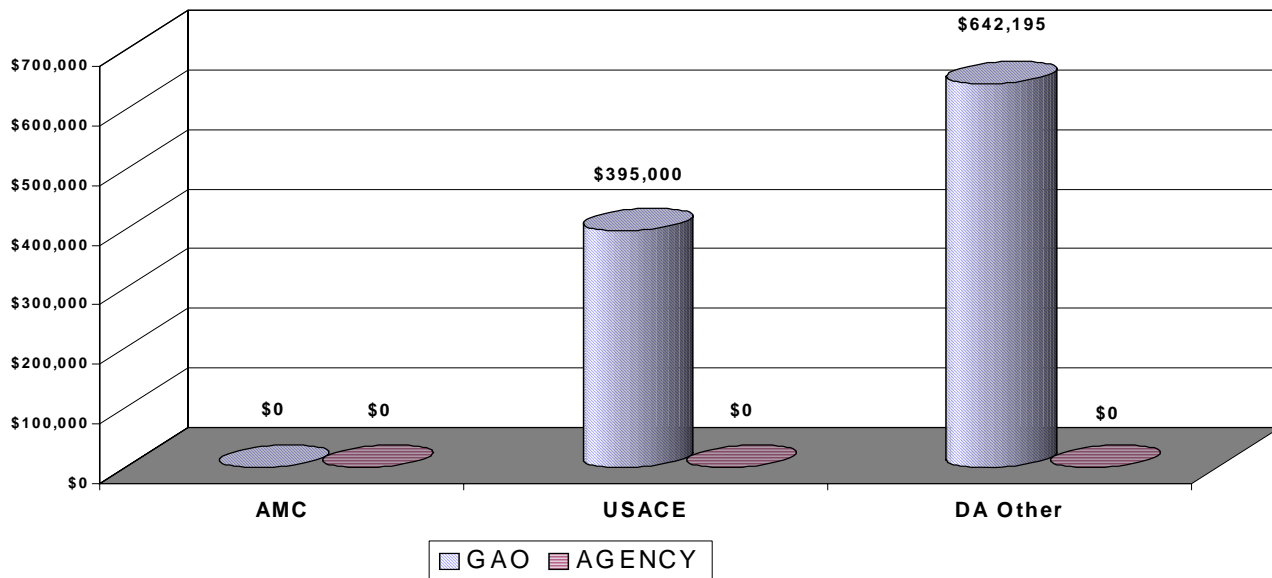
c. DA, Agency protest:

DA (Agency) TOTAL	1Q06	4Q05	3Q05	2Q05
N REG	N/A	N/A	N/A	N/A
S REG	N/A	N/A	N/A	N/A
MEDCOM	N/A	N/A	N/A	N/A
NGB	N/A	N/A	N/A	N/A
DCCW	N/A	N/A	N/A	N/A
EUSA	N/A	N/A	N/A	N/A
USSOC	N/A	N/A	N/A	N/A
USACFSC	N/A	N/A	N/A	N/A
USARC	N/A	N/A	N/A	N/A
ITEC4	N/A	N/A	N/A	N/A
USASDC	N/A	N/A	N/A	N/A
USARPARC	N/A	N/A	N/A	N/A
DETRICK	N/A	N/A	N/A	N/A
MDA	N/A	N/A	N/A	N/A
MTMC	N/A	N/A	N/A	N/A
USARO	N/A	N/A	N/A	N/A
USAREUR	N/A	N/A	N/A	N/A
INSCOM	N/A	N/A	N/A	N/A
DIA	N/A	N/A	N/A	N/A

11. Graphs on GAO & Agency level protests filed and associated costs/fees:

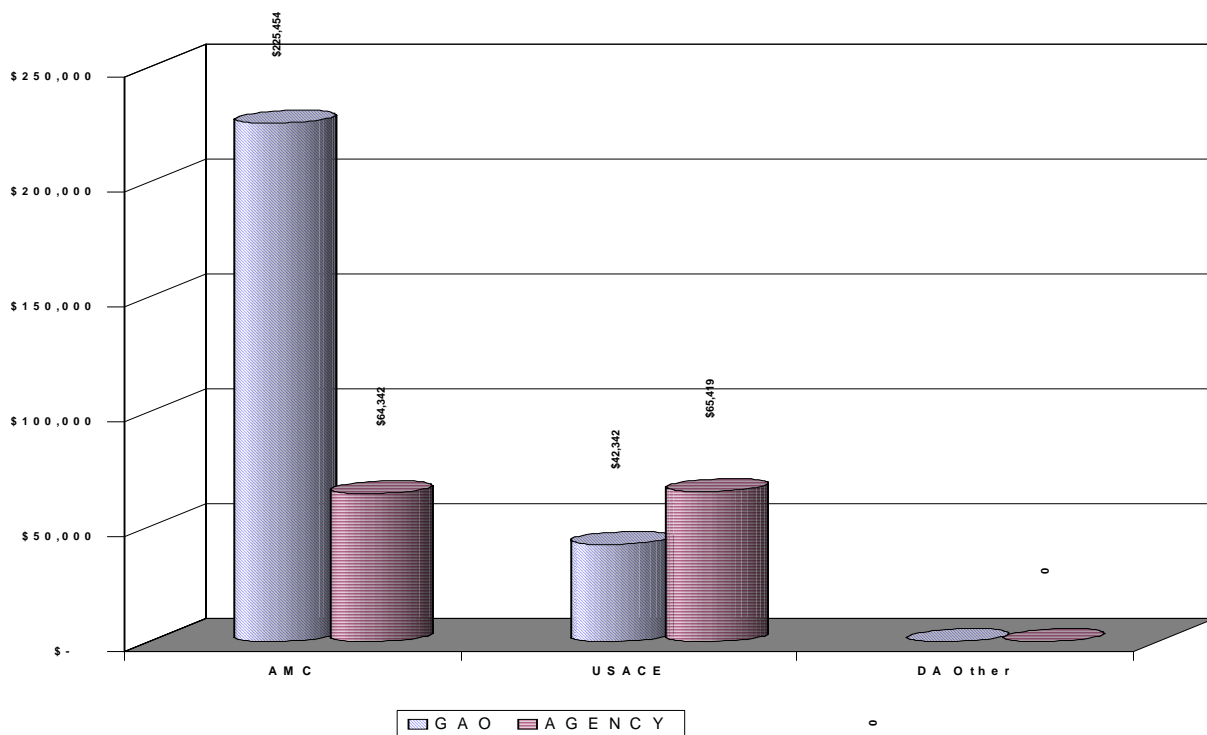


1Q06 GAO & AGENCY Level COSTS & FEES AWARDED TO CONTRACTOR



Note: The amounts shown for USACE and DA Other are under negotiation and have not been finalized

1 Q 0 6 G A O & A G E N C Y L e v e l P e r s o n n e l C o s t s



1Q 06 GAO & AGENCY Level Post-Awarded Costs

